IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9862 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMAD IMTIAZ GULAM MOYUDDINJIVASHETHWALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MS MITA PANCHAL, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 14.4.2003 passed by the Police Commissioner, City of Surat, against him, in exercise of powers under Section 3(1) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 16.4.2003.

2. The grounds served upon the petitioner and placed on record reveal that in passing the order, the detaining authority has relied upon two aspects of the matter. Firstly, upon registration of crimes against the petitioner, 5 in all in number, under Sections 457 and 380 of the Indian Penal Code and statements of witnesses as recorded by the proposing authority on 22.3.2003 and verified by the detaining authority on 10.4.2003. The identity of the witnesses have not been disclosed as per Sec. 9(2) of the PASA Act. The witnesses referred to the incidents occurred on 8.12.2002 and 16.2.2003. The incidents reveal the tendency of the petitioner to repeat the crime and picking up quarrel by the petitioner with the witnesses on account of illegal activities of the petitioner. From the above material, the impugned order came to be passed by the detaining authority.

3. Learned Advocate Mr. M.N. Kapadia for the petitioner and learned AGP Mrs. Mita Panchal for the respondents were heard at length. Learned AGP has placed on record an affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Though various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the sole ground of delay in passing of the order. The grounds urged by the petitioner in the petition have been replied by the detaining authority in affidavit-inreply. Now, as per the grounds placed on record, the last offence came to be registered against the petitioner on 13.1.2003 and he was released on bail after two days. Thereafter, in-camera statements of the witnesses came to be recorded in respect of the incidents occurred on 8.12.2002 and 16.2.2003. These statements came to be verified by the detaining authority on 10.4.2003 and order came to be passed on 14.4.2003. The delay appears to have occurred at two stages. Firstly, after the last offence came to be registered against the petitioner on 13.1.2003 and he was released on bail on 17.1.2003 to 22.3.2003 where the proposing authority recorded in-camera statements of the witnesses. The second stage is from 23.3.2003 to 14.4.2003 because on 23.3.2003 a

proposal was submitted to the detaining authority, which passed the order on 14.4.2003. Now in para 10 of the affidavit, as has been vehemently urged on behalf of the respondents by AGP, that the detaining authority has explained the delay. But, going through the para-10 of the affidavit-in-reply, it appears that the delay occurred at two stages, is not sufficiently explained. As far as the delay between 17.1.2003 to 22.3.2003 is concerned, the detaining authority has stated that after the release of the petitioner on bail on 17.1.2003, the petitioner continued in indulging in the anti-social activities, as clearly disclosed from the material placed before him. It was also stated in the affidavit that the sponsoring authority after the release of the petitioner, collected necessary information and material in respect of the anti-social activities of the detenu and recorded the statements of the witnesses and submitted proposal on 23.3.2003. Now, the petitioner was engaged in anti-social activities right from the date of his release on bail on 17.1.2003, then, there is no explanation as to how the delay occurred in recording to the statements by the proposing authority till on 22.3.2003. The affidavit is not explaining this delay. The second stage is concerned, the detaining authority, in his affidavit stated that on receipt of the proposal on 26.3.2003, the genuineness and correctness of the statements of the witnesses were verified by him by calling upon the witnesses to his office on 10.4.2003, and after following necessary procedure, the order of detention was passed on 14.4.2003 and served upon the petitioner on 16.4.2003. Now, again the matter pertains to the preventive action of the illegal activities of the petitioner, the prompt action day-to-day is required to be taken, is the principle of law. It is not explained that how 14 days lapsed between the proposal and the verification of the witnesses. There is no explanation that how four more days lapsed in passing the order except the detaining authority has stated that he followed the necessary procedure. In sum and substance, therefore, there is apparent delay caused in passing the order and there is no sufficient explanation for this delay. The impugned order, therefore, is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Surat, on 14.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty

forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair